

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6246 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KAMLABEN WD/O. AMBALAL

JAYRAMBHAI VADIWALA

Versus

STATE OF GUJARAT

Appearance:

MR MA KHARADI for Petitioner

MR DN PATEL AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 16/12/97

ORAL JUDGEMENT

With the consent of the learned advocates, this matter is finally heard today.

The petitioner by way of this petition under Article 226 & 227 of the Constitution of India has challenged the order Annexure-A dated 29.10.1988 passed by the Competent Authority and the Deputy Collector (ULC) and order Annexure-B dated 28.1.1997 passed in Appeal No.

145/1988 by the Urban Land Ceiling Tribunal, upholding the order passed by the respondent no. 2. By the impugned order, the authorities have held that the petitioner is having 1304sq.mts. of lands as surplus within the meaning of Urban Land (Ceiling & Regulations) Act. The only question which is required to be decided in this petition is as to whether the authorities have considered the units which the members of HUF requires to hold under the provisions of the Act. There is no dispute to the fact that the father-in-law of the petitioner filed from under sec. 6 as a Karta of the HUF and his son Ambalal, who is the husband of the petitioner expired on 6.2.1988, meaning thereby that when the Act came into force, not only that the deceased has become the member, but the petitioner being the wife of the deceased, a separate unit qua petitioner was required to be given. The petitioner has placed reliance on the decree passed in Special Civil Suit no. 182 of 1973 by the learned Jt. Civil Judge (SD) Surat. Perusing the said decree, it transpires that the petitioner was also given share of the property belonging to the HUF. There is no dispute to the fact that this decree was also on record. However, the authorities below have not considered and appreciated the submissions advanced on behalf of the petitioner in view of the decree passed by the competent court. This is in my view, has resulted into miscarriage of justice, and therefore, this petition is requires to be allowed and the matter is requires to be remanded back to the respondent no. 2-competent officer and Deputy Collector (ULC) , Surat with a direction to re-hear the matter and take appropriate decision in the matter in accordance with law after hearing the concerned parties.

In the result, this petition is allowed. The impugned orders at Annexure-A & B are quashed and set aside. The matter is remanded back to the respondent no. 2 to decide the matter afresh and take appropriate decision in accordance with law after hearing the parties. It is clarified that the said authority shall hear and decide the matter independently in the light of the decree passed in favour of the petitioner. Rule made absolute with no order as to costs.
